

CHRISTMAN LAW, P.L.
A professional limited liability company

From: HEATHER R. MAXWELL, ESQ., TOWN ATTORNEY
To: Mayor, Town Council Members, Interim Town Administrator, Town Clerk
Date: May 16, 2023
Subject: Investigation and Analysis of Town Charter Supervisory Responsibilities

During its April 18, 2023, Special Town Council Meeting, the Town Council voted to approve an up-to-date organizational chart for the Town of Lake Hamilton. The organization chart places all departments under the Town Administrator, and the Assistant Town Clerk position under the Town Clerk. It appears some confusion has arisen as it relates to the supervisory roles and responsibilities of the Town Administrator and Town Clerk, at least in part, due to job descriptions that were presented to and approved by the Town Council during the November 1, 2022, Town Council meeting. During such meeting, the Council approved job descriptions for the positions of Fiscal Coordinator and Administrative Specialist/Assistant Town Clerk positions, with both descriptions stating the positions are, "under the supervision of the Town Clerk." During and after the April 18, 2023, Town Council meeting, questions arose regarding the appropriate official to supervise various staff positions, and I have been requested to provide this legal opinion on the matter.

The current Town Charter was approved by referendum in 2020 and is the chief governing document for the Town (outside of applicable state and federal laws and regulations). No ordinance, resolution, or other act of the Town Council, or portion thereof, may supersede or conflict with lawful provisions of the Town Charter. The Town Charter, at Section 3.03, provides, "The town administrator shall direct and supervise the administration of all departments of the town..." The Town Charter does not speak to the Town Clerk having direction or supervisory authority; however, the Charter allows the Town Council to assign additional duties to the Town Clerk that are not in conflict with the Charter or other applicable law. Section 3.04 of the Charter also provides, "The town council shall have the authority to appoint an employee to serve as deputy town clerk to serve in the absence of the town clerk." The Town Charter does not speak to whom the deputy town clerk shall report.


Pursuant to Section 3.03 of the Town Charter, all departments must be directed and supervised by the Town Administrator. The Charter contemplates the appointment by the Town Council of a deputy town clerk to serve as the Town Clerk in the Town Clerk's absence. Should an employee serving in a department under the Town Administrator be appointed as deputy town clerk, when necessary, that position must be directed and supervised by the Town Administrator. The Town Council may assign supervisory duty to the Town Clerk over a deputy or assistant town clerk without violating the Town Charter, so long as such position is dedicated to the department of the Town Clerk and does not otherwise carry responsibilities that fall under the purview of the Town Administrator.

My review of the Fiscal Coordinator job description finds no conflict with the Town Charter, other than the position being under the supervision of the Town Clerk. The fiscal coordinator position must report to the Town Administrator. The Administrative Specialist/Assistant Town Clerk position carries non-clerk

responsibilities that are required to fall under and report to the Town Administrator. Given an employee designated to serve as deputy town clerk may report to the Town Administrator without violating the Town Charter, the following are my findings:

Findings:

1. Job descriptions or positions that conflict with the Town Charter are deemed invalid to the extent of such conflict.
2. The Town Administrator shall direct and supervise the administration of all departments of the town.
3. The Town Charter outlines the duties and responsibilities of the office of the Town Clerk. The Town Council may assign the Town Clerk supervisory authority over position(s) dedicated to the office of the Town Clerk.
4. The duties of Fiscal Coordinator fall under the direction and supervision of the Town Administrator pursuant to the Town Charter.
5. The Administrative Specialist/Assistant Town Clerk job description contains substantive conflicts with the Town Charter. The primary essential duties and responsibilities of the job description fall under the purview of the Town Administrator.
6. The Town Council shall have the authority to appoint an employee to serve as deputy town clerk to serve in the absence of the Town Clerk. If the designated employee is in a position with duties that fall under the purview of the Town Administrator, the employee must report, in all respects, to the Town Administrator. The Town Administrator shall be responsible for ensuring this employee receives the appropriate education and training to effectively serve in the absence of the town clerk.
7. If an employee designated by the Town Council to serve as deputy town clerk is in a position that is dedicated to the office of the Town Clerk and does not otherwise carry responsibilities that fall under the purview of the Town Administrator, such employee may be directed and supervised by the Town Clerk. As of the date of this memo, the only position that fits this circumstance is the Assistant Town Clerk, a position that is identified in the Town's Organizational Chart but has not been budgeted by the Town Council. To the extent there is a distinction between the terms "deputy" and "assistant", the Council may wish to consider merging such roles and titles for clarification.



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